

MADISON B-CYCLE EXPANSION GRANT AGREEMENT
Between the City of Madison and B-Cycle LLC

This Madison B-Cycle Expansion Grant Agreement (“Agreement”), made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and B-Cycle LLC, a Delaware Limited Liability Company (“B-Cycle”), is effective as of the date by which all parties have signed hereunder and according to the terms and conditions set forth herein.

RECITALS

WHEREAS, Trek Bicycle Corporation (“Trek”) is a Madison-area based company that is among the largest bicycle manufacturers in the world and a major employer in the Dane County region; and,

WHEREAS, B-Cycle LLC (“B-Cycle”), which is owned by Trek, manufactures and operates next-generation bicycle-sharing programs to address urban transportation needs; and,

WHEREAS, in 2011, the City and Trek entered into a Bicycle-Sharing Facility Privilege Agreement (“Privilege Agreement”) and a 10-year City-Sponsored Bicycle-Sharing Program Operating Agreement (“Operating Agreement”), under which the City, Trek and B-Cycle have worked collaboratively to develop the City’s bicycle-sharing program, Madison B-Cycle. B-Cycle owns and maintains the system, including the bicycle sharing stations and the e-bikes, while the City provides planning and engineering support, while also making station locations available to B-Cycle; and,

WHEREAS, in 2021, the City and B-Cycle entered into new Operating Agreement that could extend through 2040, replacing the original agreement between the City and Trek, and also assigning Trek’s rights and obligations under the Privilege Agreement to B-Cycle. As reflected by this long-term commitment between the Parties, Madison B-Cycle has become a valuable part of the City’s transportation network, providing alternative transportation options for City residents, workers and visitors, particularly in the downtown and campus area, and is a benefit to the City, Trek and B-Cycle; and,

WHEREAS, when it was first implemented in 2011, Madison B-Cycle originally consisted of 16 stations, primarily downtown and in the University of Wisconsin-Madison campus area. The program has consistently expanded outward from its origins, through investments by B-Cycle and private sponsorships, and now includes 58 stations, many of which are located in the public right-of-way or on City property, and an all-electric bike fleet, with 335 e-bikes in service, that saw more than 300,000 trips taken in 2021. However, the Parties recognize that Madison B-Cycle could better advance both Parties’ interests by expanding into underserved neighborhoods to build a more equitable system; and,

WHEREAS, the City and B-Cycle agreed to partner on a Non-Infrastructure Transportation Alternatives Program (TAP) Project grant application with Wisconsin Department of Transportation (WisDOT) for the 2022-2026 cycle (the “Grant”), to expand Madison B-Cycle

by adding 11 new stations and 55 e-bikes to the system, including placing bicycle sharing stations in more equitable locations to grow the system and expand bicycle sharing program availability to underserved neighborhoods (the “Project”). B-Cycle has agreed that if the City applies for the Grant, that it will reimburse the City for the local share if the City is awarded the Grant; and,

WHEREAS, the City has been notified that it has been awarded the Grant for the Project, under which WisDOT will reimburse the City for up to 80% of the Project costs, up to \$346,000, in federal funds, and the City will be responsible for the remaining 20% (\$86,600) of Project costs (the “Local Share”). This Grant funding will be provided for under a State/Municipal Agreement between the City and WisDOT (“SMA Agreement”); and,

WHEREAS, in order to complete the Project, it is necessary for the Parties to enter into this Agreement to address the work to be done under the Project, the manner of paying for this work, and other terms and requirements of the Grant and the SMA Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the City and B-Cycle hereby enter into this Agreement, subject to the following terms and conditions:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for the Project and to address the payment of the Local Share of Project costs, while ensuring compliance with the Grant conditions and the SMA Agreement.
2. Term. This Agreement shall expire ten (10) years after the last station described below in Sec. 3.a is installed.
3. Project. B-Cycle agrees that it shall add 11 bicycle-sharing stations and 55 e-bikes to the Madison B-Cycle system as set forth in this section. B-Cycle shall procure the equipment and e-bikes, and install the same, subject to any applicable federal funding requirements.
 - a. Locations. The station additions shall be located in the following areas:
 - (1) East Transfer Point (102 W. Corporate Drive)
 - (2) Warner Park (2930 N. Sherman Ave.)
 - (3) Emerson East Park (1915 E. Johnson St.)
 - (4) Hiestad Park (4302 Milwaukee St.)
 - (5) Acewood Park (1402 Acewood Blvd.)
 - (6) Goodman Park (1402 Wingra Creek Pkwy.)
 - (7) Duane F. Bowman Park (1775 Fish Hatchery Rd.)
 - (8) Sycamore Park (830 Jana Ln.)

- (9) Melvin Ct.
- (10) S. Park St.
- (11) Beld St.
- b. Station Placement. The Parties shall follow the terms of the Operating Agreement and the Privilege Agreement to determine the precise locations of the new stations set forth in Sub. a.
- c. E-Bikes. B-Cycle shall add 55 new e-bikes to the Madison B-Cycle system to support the 11 new stations.
- d. Timing. All new stations and e-bikes shall be added to the Madison B-Cycle system no later than four-years from the commencement of this Agreement. Pursuant to the terms of the SMA Agreement, once the City is notified by WisDOT that the Project is authorized and available for charging, the City shall notify B-Cycle and work on the Project may commence.
- e. Traffic Control. All signs and traffic control devices and other protective structures erected on or in connection with the Project including such of these as are installed at the sole cost and expense of B-Cycle or by others, will be in conformity with such “Manual on Uniform Traffic Control Devices” as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
- f. Responsibility. B-Cycle assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by B-Cycle for the Project. B-Cycle is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. B-Cycle will reimburse the City if the City incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- g. Project Benefit. The Parties agree that the Project, once completed, will benefit the general public and that all of the Project will benefit the public sector.
- 4. Special On-Going Maintenance Responsibilities. As provided for by the Operating Agreement, B-Cycle is responsible for the operation of the Madison B-Cycle program. As such, B-Cycle owns the stations, the e-bikes, and all associated equipment. Notwithstanding these general obligations, during the term of this Agreement, B-Cycle agrees to own and maintain the stations and e-bikes described above in Sec. 3.a and c for their useful life. B-Cycle understands that a failure to follow this provision could result in the City being liable to the State of Wisconsin or the United States government for all or a portion of the Project funding covered by the Grant. Should that occur, B-Cycle agrees to reimburse the City for any amounts owed.
- 5. Costs; Payment.

- a. Project Budget. Adding and installing the 11 stations and the 55 e-bikes to the Madison B-Cycle system is estimated to cost \$433,000. Of this amount, up to \$346,400 (80%) is expected to be covered by the Grant (Federal funding) under the terms of the SMA Agreement, and B-Cycle has agreed to cover the remaining amount (the Local Share), as provided in this Section.
 - b. Federal Funding. Under the SMA Agreement and the Grant, Federal funding will be limited to participation in the costs of the following items, as applicable to the Project:
 - (1) Preliminary Engineering, Plan Development, Planning Study.
 - (2) State Review Services.
 - (3) Other eligible TAP non-infrastructure items as enumerated in the approved application (the stations and e-bikes).
 - c. Non-Appropriation. The Parties acknowledge that the State's authority to make Grant payments to the City under the SMA Agreement is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Wisconsin Legislature. If Grant funds are not so appropriated by the State, and the SMA Agreement is terminated, work on the Project shall cease. If B-Cycle continues work on the Project after being notified of non-appropriation of Grant funding, B-Cycle shall be 100% responsible for any Project costs incurred thereafter.
 - d. Invoicing. As the stations and e-bikes added to the system under Sec. 3, B-Cycle will invoice the City for 80% of these costs, up to a combined total of \$346,400, provided that B-Cycle shall not invoice the City for any costs incurred before the SMA Agreement is entered into by the City and WisDOT.
 - e. Payment; Reimbursement. The City agrees that it will pay B-Cycle within thirty (30) days of an invoice prepared under Sub. d, after which it shall be the City's responsibility to seek reimbursement from WisDOT under the terms of the SMA agreement with the State of Wisconsin. B-Cycle agrees to work with the City to prepare any necessary documentation to support the reimbursement claim.
 - f. Overages. If total Project costs exceed \$433,000, B-Cycle shall complete the Project, and shall be 100% responsible for the remaining costs.
 - g. Ineligible Expenses. Unless otherwise agreed to by the Parties in writing, B-Cycle shall be responsible for any Project costs that are deemed ineligible for federal reimbursement by WisDOT. If the City is required to reimburse any such amounts under the terms of the SMA Agreement and Grant conditions, B-Cycle shall reimburse the City for such costs within thirty (30) days.
6. Federal and State Requirements. Due to the Grant funding of this Project, B-Cycle agrees to be subject to certain Federal and State requirements as follows:

- a. General. Where applicable, the initiation and accomplishment of the Project will be subject to the federal and state regulations applicable to a non-infrastructure project, as referenced in the document [A Sponsor's Guide to Non-Traditional Project Implementation](#). These laws and regulations include, but are not limited to, the following:
- (1) Environmental requirements, including but not limited to those set forth in 23 U.S.C. sec. 139 and the National Environmental Policy Act (42 U.S.C. sec. 4321 et seq.).
 - (2) Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. Sec. 16.765. B-Cycle agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition, B-Cycle agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." B-Cycle agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - (3) The Project is subject to a discretionary DBE goal assessment.
 - (4) Federal and state statutes that govern the Transportation Alternatives Program.
- b. Additional applicable state and federal requirements may include, but are not limited to, the following:
- (1) Prevailing wage requirements, including but not limited to 23 U.S.C. sec. 113 and Wis. Stat. Sec. 103.50.
 - (2) Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. sec. 313 and Wis. Stat. Sec. 16.754.
 - (3) Competitive bidding requirements set forth in 23 U.S.C. sec. 112 and Wis. Stat. Sec. 84.06.
- c. Debarment Certification. By entering into this Agreement, and as further set forth in Attachment A to this Agreement, B-Cycle certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:

- (1) Are not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
 - (2) Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated above;
 - (4) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause or default; and
 - (5) That all contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, on the Project will certify in writing that neither they or their principals are currently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, State or Local transaction by any Federal, State or Local department, agency or official.
- d. Project Records; Audit. B-Cycle agrees, for a period of not less than three years following the City's final reimbursement under the SMA Agreement, to maintain all Project records and accounts, and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested. If necessary, B-Cycle shall cooperate with the City on WisDOT's Project audit, which is required under the terms of the SMA Agreement. In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.
7. Indemnification and Insurance.
- a. Indemnification. B-Cycle shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, the State of Wisconsin, and their officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City, the State, or their officers, officials, agents or employees for damages

because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from B-Cycle's acts or omissions, or neglect or misconduct, in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, the State, their officers, officials, agents, or their employees. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

b. Insurance.

- (1) Required Coverage. B-Cycle will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. B-Cycle shall not commence operations under this Agreement, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
 - (a) General Liability. Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. B-Cycle's coverage shall be primary and non-contributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. B-Cycle shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds. This insurance shall be required for the full term of the Agreement.
 - (b) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. B-Cycle shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the Agreement.
 - (c) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. B-Cycle shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. B-Cycle shall require all subcontractors under this

Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

- (d) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability with minimum limits of \$4,000,000 per occurrence and in the aggregate.
- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers authorized to do business in the State of Wisconsin who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- (3) Proof of Insurance, Approval. B-Cycle shall provide to the City certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for approval by the City Risk Manager, prior to commencing program operations under this Agreement. B-Cycle shall provide the certificate(s) to the City at the time of signing this Agreement, or sooner. B-Cycle shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice to City of Changes in Coverage. B-Cycle and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- (5) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City Finance Department
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

- 8. Default and Termination. In the event either Party shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the other, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof to the other, either Party may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the other, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the Parties under this Agreement. It shall be a default if any of the following conditions occur:

- (1) If B-Cycle makes an assignment of its property for the benefit of creditors.
- (2) If B-Cycle petitions a court to be adjudged bankrupt, or is adjudged bankrupt.

- (3) If a petition in bankruptcy shall be filed in any court against B-Cycle for more than thirty (30) days.
 - (4) If B-Cycle is judicially determined to be insolvent.
 - (5) If a receiver or other officer shall be appointed to take charge of the whole or any part of B-Cycle's property or to wind up or liquidate its affairs.
 - (6) If B-Cycle shall seek reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, including a Wisconsin Chapter 128 proceeding.
 - (7) B-Cycle shall admit in writing its inability to pay its debts as they become due.
 - (8) If any final judgment shall be rendered against B-Cycle and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final.
 - (9) If B-Cycle shall abandon the operation of Madison B-Cycle and its facilities.
9. Impossibility of Performance. Neither City nor B-Cycle shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, pandemic, or by reason of any other matter or condition beyond the control of either party.
10. Relationship of Parties. In the operation of Madison B-Cycle and the implementation of the Project, neither B-Cycle nor its agents shall act as officers, employees, or agents of the City and B-Cycle shall remain independent of, and separate from, the City. No partnership, joint venture, or other joint relationship is created hereby. In addition, the City does not extend to B-Cycle or B-Cycle's agents any authority, of any kind, to bind the City in any respect whatsoever. It is further agreed that B-Cycle, B-Cycle, and Madison B-Cycle are not employees or representatives of the City, and that any persons who B-Cycle utilizes and provides for services under this Agreement are employees of B-Cycle and are not employees of the City. In addition, it is agreed that by granting B-Cycle the right to use certain City properties for the purposes set forth herein and in the Privilege Agreement, that the City is not granting B-Cycle the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and B-Cycle arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135 nor is it the intent of the Parties to do so.
11. Title to be Retained by B-Cycle. Except as provided for in the Privilege Agreement, B-Cycle shall retain title to and ownership of all Madison B-Cycle facilities, including those installed as part of the Project.
12. Assignment and Subcontracting. B-Cycle shall not assign this Agreement or any interest therein without the prior written agreement of the City.

13. Binding on Parties; Amendments. This Agreement shall be binding on the Parties hereto, and, except where expressly provided otherwise, cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties hereto unless the same be in writing signed by the duly authorized agent or agents of the Parties.
14. Notices. All notices required to be given under the terms of this Agreement shall e-mailed, or personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: City of Madison
Pedestrian Bicycle Administrator
Traffic Engineering Division
210 Martin Luther King, Jr. Blvd., Suite 109
Madison, WI 53703
recallaway@cityofmadison.com

B-Cycle: Executive Director, B-Cycle LLC
801 W. Madison St.
Waterloo, WI 53594

15. Non-Discrimination. In the performance of the services under this Agreement, B-Cycle agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. B-Cycle further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
16. Nondiscrimination Based on Disability. B-Cycle shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. City financial assistance includes any arrangement by which the City provides or otherwise makes available assistance in the form of funds, services of City personnel, and the permission to use City property.
17. Agreement Governed by Laws of Wisconsin. This Agreement shall be deemed executed in the City of Madison and in the State of Wisconsin and governed by the laws of the State of Wisconsin.
18. Compliance with the Law. B-Cycle agrees to comply with all laws and ordinances of the United States, the State of Wisconsin, Dane County, and the City of Madison.

19. Entire Agreement. The entire agreement of the Parties regarding the Project is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the Parties.
20. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
21. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or B-Cycle shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or B-Cycle therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
22. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the Parties that all other provisions of this Agreement remain in full force and effect.
23. Authority. The Parties each represent that they have the authority to enter into this Agreement, and the person(s) signing on behalf of the City and B-Cycle represent and warrant that he or she have been duly authorized to bind the City and B-Cycle and sign this Agreement on their behalf.
24. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date by which all Parties have signed hereunder and according to the terms and conditions set forth herein.

FOR B-CYCLE LLC

Chad Brown, _____

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael R. Haas, City Attorney

Date

Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 22-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2022.

ATTACHMENT A

DEBARMENT AND SUSPENSION CERTIFICATION

Instructions for Certification:

1. By signing and submitting this Agreement, the B-Cycle is providing the signed certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
6. B-Cycle agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by in writing by the department or agency entering into this transactions.
7. B-Cycle further agrees by submitting this proposal that it will include this clause titled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant agrees to review the “Excluded Parties Listing System” at <http://www.sam.gov>, before entering into any third party contract or subagreement.

9. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under Paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

B-Cycle certifies, by execution of this Agreement, to the best of its knowledge and belief, that neither it nor its “principals,” as defined in 2. C.F.R. Part 180.995:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification.

Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, local) terminated for cause or default.

If the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal, and indicate that it has done so, by placing an “X” in the following space: ☐.

Furthermore, B-Cycle certifies that it will provide immediate written notice to the City if, at any time during the course of the proposed contract, it learns that this certification was erroneous when submitted or has been erroneous by reason of changed circumstances.

B-CYCLE CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, B-CYCLE UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

SIGNATURE _____

NAME _____

TITLE _____

FIRM NAME _____

DATE _____